

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
ANTHONY DEO et al., : 24-cv-06903-NJC-JMW
Plaintiffs, :
: U.S. Courthouse
- versus - : Central Islip, New York
BARON et al., :
Defendants : November 19, 2024
: 3:07 p.m.
-----X

TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE NUSRAT JAHAN CHOUDHURY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiffs:

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(Appearances continue on next page)

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1 THE CLERK: Good afternoon. This is 24-cv-
2 6903, *Deo et al. v. Baron et al.*

3 Counsel, please state your appearances for the
4 record.

5 MR. THOMASSON: For the plaintiffs, your Honor,
6 Harry Thomasson, 3280 Sunrise Highway, Box 112, Wantagh,
7 New York. That's for all of the plaintiffs, your Honor.

8 THE COURT: Okay. Thank you.

9 MR. THOMASSON: Good afternoon.

10 THE COURT: Good afternoon.

11 MR. KATAEV: For defendant Superb Motors, Inc.
12 Emanuel Kataev of Sage Legal LLC. Good afternoon, your
13 Honor.

14 THE COURT: Good afternoon.

15 MR. MEISEL: Good afternoon, your Honor. Matt
16 Meisel and my colleague Jillian Fitzpatrick for Ally
17 Financial Inc. We're from the law firm of Reed Smith.

18 THE COURT: Good afternoon.

19 MR. BUTT: Good afternoon, your Honor. Samuel
20 Butt from Schlam Stone & Dolan for defendant Bruce
21 Novicky.

22 MR. GREEN: Good afternoon, your Honor. Daniel
23 Green of Vedder Price for defendant Citrin Cooperman &
24 Company LLP.

25 MS. MICKLES: Good afternoon, your Honor.

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1 Hayly Mickles from the law firm Sherman Atlas Sylvester &
2 Stamelman for defendant JPMorgan Chase, N.A.

3 MR. SHANKS: Good afternoon, your Honor.

4 Russell Shanks of Cyruli Shanks & Zizmor for the first 13
5 named defendants.

6 MR. SCHER: Good afternoon, your Honor. Brett
7 Scher from Kaufman Dolowich on behalf of Cyruli Shanks &
8 Zizmor.

9 MR. SIMS: Good afternoon, your Honor. Michael
10 Sims with my colleague Kevin Badkhshan of the firm
11 Zeichner Ellman & Krause for defendant Nissan Motor
12 Acceptance Company.

13 MR. MCDONALD: Good afternoon, your Honor.
14 Conor McDonald; Milber Makris Plousaidis & Seiden,
15 counsel for Richard, Witt, Charles, LLP.

16 MR. FELSEN: Good afternoon, your Honor. Jamie
17 Felsen from Milman Labuda Law Group for Milman Labuda Law
18 Group.

19 MR. GAUNCE: And good afternoon, your Honor.
20 Nick Gaunce from Eckert Seamans for defendant NextGear
21 Capital, Inc.

22 THE COURT: Good afternoon. Thank you all for
23 coming.

24 So as many of you may know, normally I don't
25 have a status conference in a case, a civil case, until

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1 we're at the dispositive motion deadline speaking about a
2 pre-motion conference regarding an anticipated motion to
3 dismiss or motion for summary judgment.

4 Here I do see that there are seven or so
5 different letters that have been filed by various
6 defendants in the case in anticipation of filing motions
7 to dismiss.

8 I also see that there was an order issued by
9 Judge Wicks, several orders, which several defendants, I
10 believe defendant Superb, seeks to vacate and there are
11 several requests in that motion.

12 And there's the issue of whether the parties do
13 or do not consent to the jurisdiction of a magistrate
14 judge.

15 I understand that there is a related case,
16 docket number 2:23-cv-6188 that involves many of the same
17 parties. I believe all of the parties in that action are
18 parties in this action. There are some additional
19 defendants in this action as well.

20 So the first thing that I will do is let you
21 know that I have looked very closely at defendant
22 Superb's motion at docket number 46. This is a motion to
23 set aside Magistrate Judge Wicks' November 1, 2024 and
24 November 2, 2024 orders and for an extension of time to
25 respond to the complaint. I believe that this motion was

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1 filed on November 8th.

2 And I've reviewed it closely and I have not
3 seen any response to this motion by any other party, but
4 I'm prepared to rule on it. If anyone would like to be
5 heard on it prior to my ruling, I'm happy to give you a
6 couple of minutes to do so.

7 MR. THOMASSON: I would, your Honor.

8 THE COURT: Okay. Go ahead.

9 MR. THOMASSON: This is the motion to set aside
10 the order regarding consolidation and magistrate consent?
11 That particular order, Judge?

12 THE COURT: Yes. Docket number 46.

13 MR. THOMASSON: I don't think there's a shred
14 of integrity in that request, your Honor. I don't think
15 that it is anything but frivolous to suggest to this
16 Court that my clients should not be getting the benefit
17 of their attorney's work over the last now 24 months.

18 Before we filed that complaint, I spent 21
19 months investigating what I needed to file in that
20 complaint because I had no firsthand knowledge of it. I
21 was --

22 THE COURT: I don't want to re-litigate. This
23 is not a place to re-litigate issues that were raised in
24 that case.

25 MR. THOMASSON: Right.

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1 THE COURT: This is a very discrete motion to
2 vacate two orders.

3 MR. THOMASSON: Right.

4 THE COURT: I'm prepared to issue a ruling
5 forthwith. I read all of the correspondence very
6 closely. I'm not looking for characterizations of
7 arguments.

8 MR. THOMASSON: Okay.

9 THE COURT: I'm just looking to see what
10 substantive points you have. I understand what the legal
11 standard is. It's a purely erroneous legal standard, a
12 very hard standard to meet.

13 So if you'd like to give me some argument on
14 the substance that's on point, that would be helpful.

15 MR. THOMASSON: I was just heading to the fact
16 that this isn't just another bite of the apple. They
17 don't get just another bite of the apple. They have to
18 show that there was a ruling that's clearly erroneous. I
19 don't think that they're within a mile of doing that. I
20 would argue to the Court that they're not.

21 And if the Court were in any way, shape, or
22 form inclined to do this -- which is not being done for
23 any good reason, it's being done for strategic reasons
24 only and mainly to get me out of the case.

25 The fact of the matter is we heavily oppose

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1 it and if the Court were inclined to grant their motion,
2 we would like the opportunity to respond in writing.

3 THE COURT: Okay. Anyone else would like to
4 add anything? Mr. Kataev, I've read your submission very
5 closely so I'm not looking for a rehearsal of arguments
6 that have been made on paper. Is there anything you'd
7 like to add in addition?

8 MR. KATAEV: Yes. I only want to add that the
9 notice of motion provides for two weeks under Local Civil
10 Rule 6.1. So plaintiff's opposition papers will be due
11 this Friday by my count.

12 THE COURT: Okay. Okay. So November 8th was
13 when you filed your motion. Two weeks from November 8th
14 is when?

15 MR. KATAEV: The 22nd, your Honor.

16 THE COURT: Okay. Mr. Thomasson, will you be
17 providing a submission in writing or do you rest on your
18 argument here today?

19 MR. THOMASSON: I'll rest on my argument today,
20 your Honor.

21 THE COURT: Okay. Anything further any other
22 parties wish to state on this motion? Now is the time.

23 MR. SIMS: Good afternoon, your Honor. Michael
24 Sims for --

25 THE CLERK: Please speak into the microphone.

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1 MR. SIMS: Michael Sims for defendant NMAC. We
2 oppose consolidation of the cases. We view ourselves as
3 a peripheral defendant. We are not a party to the
4 related case and --

5 THE COURT: And who is your client, sir?

6 MR. SIMS: Nissan Motor Acceptance Corp., NMAC.

7 THE COURT: And I believe that -- did you
8 submit a letter on the motion to consolidate? I believe
9 you did.

10 MR. SIMS: We filed a letter with Judge Wicks
11 opposing consolidation. And we would support the
12 decision to delay any decision on consolidation until the
13 Court addresses the issue of who's a proper party to the
14 case.

15 We, along with several other defendants, have
16 filed a pre-motion letter requesting leave to make a
17 motion to dismiss. And frankly, we'd like to have that
18 opportunity to get out of the case as quickly as
19 possible. And we think we'd be prejudiced if we're
20 dragged into the related case to which we're not a party
21 and frankly we don't belong in either case.

22 So we would oppose consolidation for those
23 reasons at this time.

24 THE COURT: Thank you. And again, I'm not
25 ruling on a motion to consolidate. My review here is

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1 simply to determine whether there's any clear error in
2 the magistrate judge's order.

3 MR. SIMS: Understand. But just wanted to make
4 our position known.

5 THE COURT: Understood. Anyone else?

6 MR. KATAEV: Your Honor --

7 MR. MEISEL: Just to clarify. Again, Matt
8 Meisel from Reed Smith for Ally. You don't want to hear
9 anything on the consolidation positions?

10 THE COURT: I'm asking if you have a position
11 on this motion to vacate Judge Wicks' order which very
12 clearly stated he was denying without prejudice a motion
13 to consolidate. And a denial of a motion to consolidate
14 without prejudice means that that motion could be brought
15 at a later time. Right?

16 MR. MEISEL: Correct.

17 THE COURT: Such as after a ruling on motions
18 to dismiss in this action and in the related action.

19 So the question before me is whether there is
20 clear error in the magistrate judge's legal ruling to
21 deny without prejudice the motion to consolidate.

22 And the other question before me is on this
23 motion to vacate Judge Wicks' November 2, 2024 order
24 directing the Court to assign a district judge, whether
25 there was any clear error in his issuance of that

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1 direction in light of his finding that there was no
2 unanimity at that point as to consent to a magistrate
3 judge. That's the very narrow issue before me right now.
4 So I don't need to hear arguments on the motion to
5 consolidate. I understand that that was denied without
6 prejudice and could be raised later.

7 Mr. Sims? Did I get your name right? Is it
8 Sims?

9 MR. SIMS: That's correct, your Honor.

10 THE COURT: Yes. As Mr. Sims seemed to
11 indicate might be appropriate following resolution of a
12 number of the motions to dismiss that certain parties
13 anticipate making.

14 Mr. Kataev, did you want to be heard?

15 MR. KATAEV: Yes, your Honor. I did not read
16 Judge Wicks' order as being denied without prejudice and
17 with leave to renew. I see why the Court is viewing it
18 that way but because of the semicolon I assumed that the
19 denial of the motion to consolidate was by itself and
20 that only the denial of the motion for sanctions was
21 without prejudice and with leave to renew.

22 So I want to inform the Court why I made the
23 Rule 72 motion. I understood it to be a final decision.
24 It was not clear to me that it was without prejudice and
25 with leave to renew for that reason.

13

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1 MR. THOMASSON: And your Honor, I happen to
2 agree with that view. That's how I read it as well.

3 THE COURT: Okay. Let me actually look at the
4 docket.

5 MR. KATAEV: It's dated November 1st of '24,
6 your Honor.

7 (Pause in proceedings)

8 THE COURT: Yes. I don't read this as a denial
9 with prejudice. I read this as a denial without
10 prejudice. Do you still wish to stand by your motion in
11 light of this clarification?

12 MR. KATAEV: In order for judicial efficiency I
13 think it's fine. But if it's denied because it's without
14 prejudice with leave to renew, I'm fine to re-file it. I
15 just want to be clear I did not view it as without
16 prejudice. I see the ambiguity now though.

17 THE COURT: Yes. I understand that it is
18 without prejudice. And I'm prepared to issue a ruling
19 today. Does any party have a concern with hearing a
20 ruling on this motion today? Mr. Kataev, you're not
21 withdrawing your motion. You still stand by your motion?

22 MR. KATAEV: Correct. For judicial efficiency
23 I'd like a ruling on it.

24 THE COURT: Okay. Any concerns from any other
25 parties about me ruling on the stay? Mr. Thomasson, you

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1 do not wish to submit anything in writing?

2 MR. THOMASSON: No, I'm fine, your Honor.

3 THE COURT: Okay. So I will say that in light
4 of the substantial overlap between the parties in the
5 related case, the parties in this case, and the nature of
6 the claims, what are we doing here? Like it makes sense
7 for there to be consolidation.

8 I read Judge Wicks' order as denying
9 consolidation without prejudice in light of the fact that
10 docket number 22, that motion was filed during a very
11 specific procedural moment in this case. There are
12 motions to dismiss pending in this case and a motion to
13 dismiss pending in the related case.

14 So I'm denying the motion to set aside
15 Magistrate Judge Wicks' November 1, 2024 and November 2,
16 2024 orders and for an extension of time to respond to
17 the complaint and here are my reasons.

18 First, a district court may modify or set aside
19 a magistrate judge's order on a non-dispositive motion if
20 any part of the order is clearly erroneous or contrary to
21 law. Federal Rules of Civil Procedure 72(a). See also
22 28 United States Code Section 636(b)(1)(A). *Sampedro v.*
23 *Silver Point Capital LP*, 958 F.3d 140, 141 n.1 (2d. Cir.
24 2020) citing *Thomas E. Hoar, Inc. v. Sara Lee Corp.*, 900
25 F.2d 522, 525, (2d. Cir. 1990).

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1 Under Rule 72(a), motions to consolidate are
2 not dispositive. See *In re Synergy Pharmaceuticals, Inc.*
3 *Securities Litigation*, docket number 18-cv-873, 2020 WL
4 5763830 at *2 (EDNY 2020) collecting cases.

5 Judge Wicks did not clearly err by denying
6 Superb's motion to consolidate without prejudice and with
7 leave to renew pending resolution of the anticipated
8 motions to dismiss in this case, nor is that order
9 contrary to law. And I'm citing from the electronic
10 order dated November 1, 2024.

11 In this case, there are now I believe seven and
12 perhaps a few more defendants who have indicated that
13 they seek to file motions to dismiss. These letters are
14 set forth at docket numbers 30, 32, 34, 37, 42, 47, 48,
15 50, 52, 53, and 60.

16 Likewise, in the related case docketed at 2:23-
17 cv-6188, which defendant Superb seeks to consolidate with
18 this case, there are already several pending motions to
19 dismiss. Judge Wicks' order does not foreclose defendant
20 Superb's ability to renew its motion to consolidate once
21 the motions to dismiss are resolved in both actions.

22 I therefore deny the motion to vacate Judge
23 Wicks' order denying without prejudice the motion to
24 consolidate.

25 Furthermore, I also deny the motion to vacate

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1 Judge Wicks' order denying without prejudice defendant
2 Superb's motion to vacate Judge Wicks' order directing
3 the clerk to assign a district judge, nor is that order
4 of the magistrate judge contrary to law. I'm citing
5 electronic order dated November 2, 2024.

6 This Court's review of the parties' filings
7 indicates that prior to Judge Wicks' issuance of the
8 order there was no unanimous consent to the jurisdiction
9 of Judge Wicks in this case. Judge Wicks' denial of
10 defendant Superb's motion to vacate does not preclude the
11 parties from consenting to his jurisdiction at a future
12 date. The parties can consent to his jurisdiction in
13 this case at any time they wish to. You can consent
14 today. You could consent tomorrow. You could consent in
15 two weeks.

16 Finally, defendant Superb's motion for an
17 extension of time to respond to the complaint is denied
18 without prejudice and with leave to renew before Judge
19 Wicks. Motions for an extension of time to respond to
20 the complaint are referred to the assigned magistrate
21 judge in accordance with my individual Rule 3.1.

22 So that's my ruling on the motion set forth at
23 docket number 46.

24 I do see that there would be considerable
25 efficiency and positive results for parties in both cases

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1 were the parties here to consent to the jurisdiction of
2 Judge Wicks. There is substantial overlap in the factual
3 allegations and the issues at the heart of both cases.
4 And having one final adjudicator managing discovery and
5 dispositive motion practice in both would result in
6 substantial efficiencies and likely reduce the time and
7 energy needed by the parties in both cases.

8 So what I'm going to do, since all counsel are
9 here in this case, is I'm going to leave the courtroom
10 and I'm going to instruct counsel to meet and confer and
11 actually speak face to face about whether or not they
12 consent to the jurisdiction of Judge Wicks. I'm going to
13 give you half an hour. If you need more time, please let
14 my deputy know.

15 I will not return before then, and when I
16 return, I do not wish anyone to tell me any party's
17 position on this issue. I view that to be highly
18 improper and simply it and has no place here. I will
19 simply ask one attorney to let me know whether or not
20 there is or is not unanimous consent to the jurisdiction
21 of the magistrate judge.

22 Okay. Thank you all so much. I'm going to
23 leave you now.

24 (Off the record)

25 THE CLERK: Re-calling case 24-cv-6903, Deo v.

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1 *Baron et al.*

2 Counsel, please state your appearances for the
3 record once again.

4 MR. THOMASSON: Harry Thomasson for all of the
5 plaintiffs, your Honor.

6

7 MR. KATAEV: Emanuel Kataev of Sage Legal LLC
8 for the defendant Superb Motors, Inc.

9 MR. MEISEL: Matt Meisel and Jillian
10 Fitzpatrick from Reed Smith for the defendant Ally
11 Financial.

12 MR. BUTT: Samuel Butt from Schlam Stone &
13 Dolan for defendant Bruce Novicky.

14 MR. GREEN: Daniel Green of Vedder Price for
15 defendant Citrin Cooperman & Company LLP.

16 MS. MICKLES: Hayly Mickles of Sherman Atlas
17 for defendant JPMorgan Chase, N.A.

18 MR. SHANKS: Russell Shanks of Cyruli Shanks &
19 Zizmor for the first 13 named defendants.

20 MR. SCHER: Brett Scher from Kaufman Dolowich
21 on behalf of Cyruli Shanks & Zizmor.

22 MR. SIMS: Michael Sims and Kevin Badkhshan of
23 Zeichner Ellman & Krause for defendant Nissan Motor
24 Acceptance Company.

25 MR. MCDONALD: Conor McDonald; Milber Makris

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1 Plousaidis & Seiden, counsel for Richard, Witt & Charles,
2 LLP.

3 MR. FELSEN: Jamie Felsen from Milman Labuda
4 Law Group for Milman Labuda Law Group.

5 MR. GAUNCE: And Nick Gaunce from Eckert
6 Seamans for NextGear Capital, your Honor.

7 THE COURT: Okay. Thank you all so much.

8 So I want to be clear that no party is ever
9 penalized for not consenting to magistrate judge
10 jurisdiction. There is no requirement to consent. There
11 is no disadvantage to deciding to consent or not consent.
12 We are a federal court and each judge in this building
13 takes the seriousness of each case before us and tries to
14 resolve them as best as possible. But where parties
15 choose to consent, you are absolutely permitted to do so.

16 So I gave you 30 minutes to discuss, given that
17 all of the counsel for all of the parties are here today
18 in the same room. My staff and I left the room. We have
19 no idea what the parties discussed.

20 Mr. Thomasson, I'll ask you to report to me
21 whether or not there is consent. And I will warn you I
22 do not want to know how any party decided on this issue
23 if there was not complete unanimity. And I do not look
24 kindly upon any party or counsel that provides that sort
25 of information to the Court. Okay, go ahead.

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1 MR. THOMASSON: There is not consent, your
2 Honor.

3 THE COURT: Okay. So there's no consent. At
4 this point there are a number of anticipated motions to
5 dismiss. I identified them before. The letters are set
6 forth at docket numbers 30, 32, 34, 37, 42, 47, 48, 50,
7 52, 53, and 60.

8 So I want to make sure --

9 MR. THOMASSON: Your Honor?

10 THE COURT: Excuse me? Am I missing a docket
11 number?

12 MR. THOMASSON: No, your Honor. I'm sorry. I
13 saw a pause there. I was going to jump in and tell you
14 that we discussed that too and we have a proposed
15 schedule for you.

16 THE COURT: Okay, great. Thank you so much.
17 Please do let me know.

18 MR. THOMASSON: We apparently are in agreement
19 that I will have on behalf of the plaintiffs the
20 opportunity through January 31st to amend the complaint
21 or notify the Court that I am not going to be amending
22 the complaint.

23 If I file an amended complaint between now and
24 January 31st, then the defendants are going to have until
25 March 18th to file their pre-motion letters.

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1 THE COURT: No, we are going to move straight
2 to briefing now. There are pre-motion letters that were
3 submitted. They're very detailed. So Mr. Thomasson, you
4 will have the benefit of those letters for determining
5 whether or not you wish to amend the complaint. There's
6 a lot of material there.

7 MR. THOMASSON: Yes.

8 THE COURT: So I understand that the parties
9 have proposed that you have until January 31, 2025 to
10 amend the complaint.

11 MR. THOMASSON: Yes.

12 THE COURT: That makes a lot of sense to me.
13 You mentioned that March 18, 2025 will be the date for
14 pre-motion conference letters. I'm going to dispense
15 with that requirement for the parties that have already
16 provided pre-motion conference letters, all of which I
17 closely reviewed.

18 It would be a waste of judicial time and
19 resources and attorney and client time and resources for
20 all of those parties which have already put together
21 these pre-motion conference letters with a lot of detail,
22 a lot of legal research, to have to write letters again.
23 I will require that that be the date that motions be
24 filed. Keep going.

25 MR. THOMASSON: I think that's what we

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1 discussed.

2 THE COURT: Oh, okay. So there is no
3 opposition date? No opposition date was set for you?

4 MR. THOMASSON: Right. We did not get that far
5 because we were anticipating just doing letters by mid-
6 March.

7 THE COURT: And I'm happy for the parties to
8 reach a negotiated proposed briefing schedule. That
9 saves me the energy of addressing requests for extensions
10 of time which I'm not inclined to grant. I do not intend
11 to grant requests for extensions of time. So I'm also
12 happy to give you all some more time to work out a
13 briefing schedule for the motions that have already been
14 identified for me.

15 Now, if any other party anticipates filing a
16 motion to dismiss but they haven't yet filed a pre-motion
17 conference letter, you should discuss whether you wish to
18 proceed by a pre-motion conference letter or if you just
19 want to set a briefing schedule. I understand that there
20 are parties here who believe they are ancillary to this
21 action and they are making arguments to which the
22 plaintiff gets to respond with a chance to amend the
23 complaint, that there's been group pleading and things
24 like that. It makes sense to me to resolve those issues
25 quickly to determine who should be in this case and who

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1 should not be in this case.

2 THE CLERK: Judge?

3 MR. THOMASSON: I just want to point out two
4 things if I may, your Honor.

5 THE COURT: One moment. One moment, sir.

6 THE CLERK: I'm having an issue with FTR. Can
7 you just give me one second?

8 THE COURT: We're having an issue with the
9 technology. Just hold on one moment.

10 (Pause in proceedings)

11 THE CLERK: We're back.

12 THE COURT: Okay, great. Go ahead, Mr.
13 Thomasson.

14 MR. THOMASSON: Two things, your Honor.

15 Number one, we picked the March 18th date as
16 roughly 45 days after the January 31st date. But in
17 fairness to the defendants, we were not anticipating that
18 that was going to be a brief that was actually due on
19 that day for them. We thought it was just going to be a
20 pre-motion letter.

21 So if anybody wants to change that date, I
22 don't want to just breeze through that. And I'm amenable
23 to that only because we didn't anticipate the Court was
24 going to do that. Then I had one other issue I was going
25 to raise.

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1 THE COURT: Okay. Does any defendant have an
2 issue with filing their fully briefed, their full motion
3 to dismiss by March 18, 2025? And to be clear, the
4 defendants I'm considering our Nissan, Chase, Ally,
5 NextGear, Citrin, Milman Labuda. Who else am I missing?

6 MR. MCDONALD: At docket 44 Richard, Witt &
7 Charles also filed a letter request as well, your Honor.

8 THE COURT: Thank you. What's the name of the
9 party? I'm sorry?

10 MR. MCDONALD: Richard, Witt & Charles, RWC.

11 THE COURT: RWC. Thank you. Who else am I
12 missing?

13 MR. SCHER: Your Honor, Cyruli Shanks. That's
14 docket number 50.

15 THE COURT: Docket number 50, Cyruli Shanks.
16 Thank you very much. Am I missing anyone else?

17 MR. KATAEV: I think Superb is the only
18 defendant who hasn't filed a letter motion.

19 THE COURT: Okay. So Superb is the only
20 defendant. And do you plan on filing a motion to dismiss
21 the complaint?

22 MR. KATAEV: Yes. And I join in all arguments
23 already made.

24 THE COURT: Okay. So --

25 MR. BUTT: Your Honor, Mr. Novicky has also not

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1 yet filed a pre-motion conference letter but we would
2 anticipate moving to dismiss as well.

3 MR. SHANKS: Also, your Honor, the first 13
4 defendants have not filed a pre-motion letter to dismiss.
5 But I would actually ask for April 1st and I have a basis
6 for the additional two weeks. I was contacted by counsel
7 on Friday suggesting that they may be coming on behalf of
8 the dealership defendants and the individuals related to
9 the dealership, the first 13 defendants. My firm is
10 represented by counsel. So in terms of the filing of the
11 motion to dismiss, just to give them a time to get in and
12 come up to speed, if they do, I would ask for April 1st.

13 THE COURT: Okay. So are the bases for your
14 motion to dismiss the same as what is presented for
15 others?

16 MR. SHANKS: No, I think it would probably be
17 different if they choose to make a motion to dismiss. As
18 I say, I don't know what new counsel's position is going
19 to be on that.

20 THE COURT: Okay. So that's for the first 13
21 named defendants.

22 MR. SHANKS: Yes.

23 THE COURT: And then I heard Superb wishes to
24 make a motion to dismiss raising some of the similar
25 arguments to other defendants.

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1 MR. KATAEV: Yes, your Honor.

2 THE COURT: And then I'm sorry, sir, what party
3 do you represent?

4 MR. BUTT: Bruce Novicky, your Honor.

5 THE COURT: Novicky.

6 MR. BUTT: And I expect the arguments would be
7 similar to those previously raised.

8 THE COURT: Okay. I have no problem with April
9 1 being the day for briefing if that's fine with the
10 parties. That works for defendants?

11 ALL: Yes.

12 THE COURT: Okay. I am seeing everyone nodding
13 their heads and saying yes on the defense side. So April
14 1 would be the date for a motion to dismiss.

15 And opposition, how much time would you like,
16 Mr. Thomasson?

17 MR. THOMASSON: I would take whatever the Court
18 is inclined to give me, your Honor. I'm going to have a
19 lot to deal with. And that's going to include -- we
20 might as well just deal with the housekeeping issue now
21 of am I filing separate briefs and memos to each of
22 these? Am I doing this one document in which case I'm
23 going to need some relief from court limitations in your
24 rules. I just want to raise that has a housekeeping
25 issue.

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1 THE COURT: I don't know how much difference
2 there's going to be in the different motions. I don't
3 know what amendments you're going to make to your
4 complaint.

5 MR. THOMASSON: Right.

6 THE COURT: So my view is that you could file a
7 consolidated opposition but you would need to identify
8 sections --

9 MR. THOMASSON: Of course.

10 THE COURT: -- that very clearly delineate for
11 the Court --

12 MR. THOMASSON: I would, yeah.

13 THE COURT: -- which arguments and which
14 specific motions you are addressing.

15 MR. THOMASSON: Sure. That's on me and I
16 understand that.

17 THE COURT: Okay.

18 MR. THOMASSON: I anticipated that before I got
19 here today. I would of course be able to be given relief
20 on any page limitations.

21 THE COURT: I will give you some extra pages.
22 I'll give you ten extra pages for your brief. Okay,
23 great. So that will be due on -- I will give you --

24 MR. THOMASSON: I'll take whatever I can get,
25 Judge.

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1 THE COURT: I'll give you five weeks, May 5th,
2 May 6th? April 1 is a Tuesday.

3 MR. THOMASSON: Could I have the 15th, your
4 Honor?

5 THE COURT: Yes. So that will be May 15th.
6 And for reply -- is two weeks sufficient? I'm looking at
7 the defense table. Two weeks for reply. Replies would
8 be due on May 29th. Okay.

9 So Mr. Thomasson, you're being given the time
10 to amend which is your right under the Federal Rules but
11 I am not likely to grant any further opportunity to
12 amend.

13 MR. THOMASSON: Okay. That brings me to the
14 other issue I wanted to bring up with you. It comes to
15 the issue of prejudice versus without prejudice and it
16 encompasses what you just said, your Honor.

17 My problem is this. These business -- did you
18 have an opportunity to see my complaint and exhibits yet,
19 your Honor?

20 THE COURT: I am not ruling on your complaint
21 at this point, sir.

22 MR. THOMASSON: I understand. But my question
23 is this. I tried to make it clear in that complaint.
24 When these businesses we think were wrongfully shut down,
25 these defendants took all the documents. They took

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1 everything, the cars, the documents, everything. At some
2 point in the future after two years of litigation we
3 still haven't had discovery in any of these actions. At
4 some point in the future I'm going to have discovery.
5 What if I discover something then that raises a new issue
6 or raises a new cause of action? And I'm not going to
7 have an opportunity after finally getting discovery to
8 amend again? I just want to be able to make that
9 argument down the road if and when this happens because
10 there has literally been no discovery. And we're
11 proceeding now without discovery.

12 So I do have the benefit of the pre-motion
13 letters to try and amend my complaint, and that's a
14 significant benefit to my clients. I understand that.
15 But at the same token, we're still in that deficit of
16 absolutely no documents. Anything we had, we attached to
17 the complaint. We don't have anything else. And there
18 are other documents that could end up pointing fingers at
19 people in this case that we don't even know whether or
20 not they exist let alone when and if we get them. And if
21 it changes something, I think since they're the ones that
22 took them wrongfully from us, we should be able to do
23 something about it then. Is there some sort of a
24 carveout we can make for that, your Honor?

25 THE COURT: Counsel, you're familiar with the

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1 Federal Rules of Civil Procedure. Then what rule would
2 govern your request? You tell me.

3 MR. THOMASSON: Well, off the top of my head
4 and being put on the spot, I don't recall what would help
5 me here but under the Federal Rules, I think it's in the
6 60s but I don't remember the exact number, your Honor.

7 THE COURT: So Rules 15 and 16 govern amendment
8 of the complaint. And I'm telling you now that you have
9 the benefit of numerous pre-motion conference letters --

10 MR. THOMASSON: I know.

11 THE COURT: -- in order to amend your complaint
12 and I am very unlikely to grant further opportunity to
13 amend. If you wish to make it a motion under the Federal
14 Rules of Civil Procedure siding appropriate case law
15 including Second Circuit and controlling authority that
16 you want to say argues that you were right to amend or
17 that I should grant leave to amend, you can make those
18 arguments if and when that time arises and I may deny
19 them. But it's incumbent upon you --

20 MR. THOMASSON: I understand that.

21 THE COURT: -- it's incumbent upon you --

22 MR. THOMASSON: I understand.

23 THE COURT: -- to meet the showings required
24 under the law.

25 MR. THOMASSON: Okay.

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1 THE COURT: And I'm telling you right now that
2 I'm likely to grant any further opportunity to amend.

3 MR. THOMASSON: I understand that. I would
4 only be doing it if in fact there was literally something
5 discovered that was unknown to us and we were unable to
6 obtain prior to January 31st.

7 THE COURT: Well, under Rule 16 you would have
8 to show good cause, you'd have to show diligence, you'd
9 have to show a whole lot of things that the Second
10 Circuit --

11 MR. THOMASSON: I understand.

12 THE COURT: -- has talked about. And I expect
13 all counsel in cases that appear before me to make sure
14 they are fully versed with the Federal Rules and with my
15 rules as well. Okay?

16 MR. THOMASSON: I understand, your Honor.

17 THE COURT: Okay, great. So it looks like we
18 have a briefing schedule here. Anything further that we
19 need to discuss? Mr. Thomasson?

20 MR. THOMASSON: No, your Honor. I'm fine.

21 THE COURT: Okay. Mr. Kataev?

22 MR. KATAEV: I would encourage plaintiff's
23 counsel in amending his complaint to pay attention to
24 Rule 8. We discussed making that a condition of our
25 stipulation but we've backed off of that. But we still

32

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1 think that a 192-page complaint should be reduced.

2 THE COURT: Okay. Any further comments from
3 any counsel for any defendants?

4 ATTORNEY: No, your Honor.

5 THE COURT: Okay. Thank you all for your time.
6 I appreciate it very much. Look forward to reading your
7 briefs. Bye-bye.

8 ALL: Thank you, your Honor.

9 (Matter concluded)

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C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 12th day of March, 2025.

Mary Greco
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